VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 81-81
CHARLY DICKERSON	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 7, 1981, The Vermont State Employees' Association ("VSEA") filed a grievance with the Vermont Labor Relations Board on behalf of Charly Dickerson ("Grievant"). VSEA alleged Grievant was "called in" to work on June 27 and 28, 1981, and was therefore entitled to receive mileage reimbursement under Section A of Article XXXIX of the collective bargaining agreement, effective July 1, 1979 - June 30, 1981 ("Agreement").

On December 22, 1981, the State of Vermont ("State") filed a Motion to Dismiss because Grievant was not "called in" and even if he was, Article XXXIX of the Agreement was void because it violated 32 VSA §1261 insofar as it required the payment of mileage reimbursement for travel between home and office.

A hearing was held before the full Board at the Board hearing room in Montpelier on March 26, 1982. Grievant was represented by VSEA Attorney Michael Zimmerman. Scott Cameron, Assistant Attorney General, represented the State. At the hearing, the State withdrew its Motion to Dismiss, and stipulated that 32 VSA §1261 does not bar mileage reimbursement if an employee is called in.

Requested Findings of Fact and Memoranda of Law were filed by the VSEA and the State on April 7, 1982, and April 19, 1982, respectively.

FINDINGS OF FACT

1. Grievant, since October 1977, has been an Administrative Assistant B with the Department of Corrections. He is covered by the Agreement.

2. At all times relevant herein, Grievant has resided in Montpelier, Vermont, and his office has been in Waterbury, Vermont. The daily round-trip distance between Grievant's home and office is 26 miles.

3. At all times relevant herein, Grievant's normal work schedule was from 7:45 a.m. to 4:30 p.m., Monday through Friday.

4. It was not unusual that Grievant be required to work weekends during the summer months on the preparation of the Departmental budget.

5. On either Wednesday, June 24, 1981, Thursday, June 25, 1981, or Friday, June 26, 1981, during the workday, Gene Foss, Grievant's supervisor, told Grievant he would have to come in to the office during the upcoming weekend (ie., June 27 and 28, 1981) to work on the Fiscal 1983 Departmental budget. Grievant was notified of the need to work overtime as soon as the need for such overtime work became apparent to Foss.

6. On Saturday, June 27, 1981, Grievant drove from his Montpelier residence to his Waterbury office, where he worked on the Fiscal 1983 budget. Grievant, at some point before the end of that day, took his remaining budget work home with him, where he continued to work on it into the wee hours of Sunday, June 28, 1981. After he had completed the work he had been assigned, Grievant then, on Sunday, June 28, 1981, drove the finished work to his Waterbury office, left it there, then returned home. All told, Grievant worked between eight to ten overtime hours on Saturday, June 27, and about six overtime hours on Sunday, June 28.

7. On June 30, 1981, Grievant submitted an expense reimbursement claim form to Foss. Grievant claimed, among other things, reimbursement in the amount of $5.07 for the 26-mile round-trip between home and office on Saturday, June 27, 1981, and $5.07 for the 26-mile round-trip between home and office on Sunday, June 28, 1981 (Grievant's Exhibit 10).

8. The claim was initially approved by Foss, but on July 27, 1981, Grievant received a form from the Department of Finance, which indicated Grievant's mileage reimbursement claims for June 27 and 28 had not been paid. Finance maintained the miles driven on those days were commuting expenses and commuting mileage would not be paid (Grievant's Exhibit 10).

9. The applicable portions of the Agreement are as follows:

ARTICLE XVIII
Overtime

Section 2. Distribution of Overtime

g. Employees shall be given two week's notice of scheduled overtime work.

ARTICLE XX
Call-In Pay

When an employee is called in and required to work at any time other than continuously into his normally-scheduled shift, he shall receive compensation at his overtime rates for all hours worked.

ARTICLE XXXIX
Expenses Reimbursement

A. All State employees, when away from home or office on official duties, shall be reimbursed for actual expenses incurred... Mileage between his place of residence and his normal work station shall not be reimbursable, except when the employee is "called in" under Article XX or required to travel from his home on official business.

10. Thomas Ball, presently Director of Employee Relations, Department of Personnel, was present during the bargaining sessions held during the negotiation of the collective bargaining agreement applicable to this Grievance. It is his recollection that Article XVIII, Section 2g, was agreed to as a result of the concern, expressed by VSEA, that even though supervisors in the Department of Motor Vehicles were aware well in advance of the need for overtime work by employees, they consistently failed to give their employees adequate advance notice of overtime work.

OPINION

The issue here is whether Grievant was "called in" on June 27 and June 28, 1981, and thus entitled to mileage reimbursement for travel between his home and office on those days. The facts here are not complex. Grievant was told by his supervisor on either Wednesday, Thursday or Friday (June 24, 25, 26) during the work day he would be required to come into the office during the upcoming weekend to work on the Departmental budget. Grievant did report for work on Saturday and Sunday, making two round-trips between his home and office.

One preliminary matter needs discussion, but will detain us only briefly. The parties presented evidence on negotiations in late December, 1981, concerning proposed changes in the language of Article XVIII, Section 2g, for the Agreement which was to be effective July 1, 1982. The evidence was presented for the purpose of demonstrating the meaning of "call in" under the 1979-81 Agreement. Evidence on these negotiations is not pertinent to this Grievance. The negotiations occurred subsequent to the enactment of the applicable Agreement here, the 1979-81 Agreement. Such negotiations do not demonstrate what contractual language means, but may simply be one party seeking to promote an interpretation which was not achieved through negotiations.

Grievant advances two arguments in support of his position he was "called in" those two days. Each will be discussed in turn.

Grievant's first argument is the failure of his supervisor to give him two week's notice of overtime converts overtime to call-in. That argument is based on Article XVIII, Section 2g, of the Agreement which provides: "Employees shall be given two week's notice of scheduled overtime work". If two week's notice is not given, Grievant argues, then the employee should be deemed to have been "called in."

We fail to see how the provisions of Article XVIII, Section 2g, indicate Grievant was "called in" just because he did not receive two week's notice of overtime work. It is evident this language applies to situations where the employer is aware of required overtime work well in advance of when it is to be performed, and simply ensures employees will be given two week's notice of overtime work in such situations. It does not arise from this language that overtime work not scheduled two weeks in advance because the need for such overtime work was not apparent at that time becomes "call-in" work, and we will not read terms into the contract, unless they arise by necessary implication. In re Adele Stacy, 138 Vt. 68 (1980). Grievance of John Schilling, 5 VLRB 74 (1982).

Here, Grievant was notified of the need to work overtime as soon as the need for such overtime became apparent to his supervisor. Accordingly, Article XVIII, Section 2g, was not violated.

Grievant's second argument presents an alternative theory. He contends that while not all overtime for which an employee is not given two week's notice is "call in", under the facts of this case, he should be considered to have been called in on the days in question. Grievant

argues the contract presents a "spectrum" of overtime situations. On one end of the spectrum is scheduled overtime, of which the employee receives at least two week's notice. At the other end is "call in", described in Grievant's brief as "in its classic sense"; the employee who, having returned home at the end of a normal workday, receives a call from his supervisor instructing him to immediately return to work. In between these two poles of the spectrum is the "holdover" situation where an employee, just prior to the end of his/her regular shift, is told he must work an additional shift. That employee has not been "called in", since s/he never left the workplace.

At another location on the spectrum is this fact situation, where the employee did leave the workplace before commencing the overtime hours, and where the employee did receive some advance notice, but not two week's notice. Because of the short notice coupled with the fact of his leaving the workplace before commencing his overtime work, Grievant maintains he should be deemed to have been "called in" on the days in question.

Grievant's position might be supported given different contract language. A contract may define a "call in" as proposed by Grievant. See Houdaille Industries, Inc., 59 LA 621(1972). However, there is no universal definition of "call in"; instead, the meaning of "call in" is determined by the applicable contract language. See Houdaille Industries, Inc., supra. McKeesport Area School District, 69 LA 908 (1977). International Paper, 56 LA 1227 (1971).

Here, the Agreement's definition of "call in" is limited to the following provision:

> When an employee is called in and required to work at any time other than continuously into his normally-scheduled shift, he shall receive compensation at his overtime rate for all hours worked (Article XX, Call-In Pay).

A contract will be interpreted by the common meaning of its words where the language is clear. In re Adele Stacy, supra. Here, the only modifying language to the term "called in" is the phrase "other than continuously into his normally-scheduled shift". Absent any other modifying language, we interpret "called in" by its literal meaning. "Called in" refers to a situation where an employee has completed his regular work shift and subsequently is called to come in and work before the start of his next regular work shift and does not work continuously into his normally-scheduled shift. That is the "classic" situation described in Grievant's brief.

The situation here does not meet the "call in" requirements. Grievant was not "called" to come in and work. He was told, at the latest, during his regular work shift on Friday he was required to report to work on the weekend.

Accordingly, Grievant is not entitled to mileage reimbursement pursuant to Article XXXIX A for his travel between home and office on June 27 and 28, 1981, since he was not "called in" pursuant to Article XX.

ORDER

Now, therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED:

The Grievance of Charly Dickerson is DISMISSED.

Dated this 11th day of June, 1982, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

Kimberly B. Cheney, Chairman

William G. Kemsley, Sr.

James S. Gilson